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ART. I.—*A History of the Colonies planted by the English on the Continent of North America, from their Settlement to the Commencement of that War which terminated in their Independence.* By JOHN MARSHALL. Philadelphia. Abraham Small. pp. 486.

TWENTY-THREE years have elapsed, since the work standing at the head of this article was given to the public by its distinguished author. It was originally prefixed to his *Life of General Washington*, as an Introduction necessary to the full understanding of the events of the revolution. It is now detached from that highly valuable work, the merits of which we hope, at some future period, to bring in an ample manner before our readers, if indeed there be any to whom they are unknown, and it is again presented to the public in the form of a distinct history of the colonies, adapted for an independent circulation. We entirely approve of the plan of originally annexing it to the *Life of Washington*; and we equally approve of its present separation in the manner adopted by the author, and for the reasons, which he assigns. A general knowledge of the antecedent history of the colonies is indispensable, for a correct understanding of the history of the revolution, whether it be read for edification, or for the mere amusement of idle hours.

The character of the colonists themselves, their origin, progress, and governments, their local disputes and controversies, their constant struggles against the claims of the crown and its agents, the early assertion of their rights and privileges, the structure of their institutions, the boldness and freedom of their opinions upon political subjects, their manners, habits, and pursuits, their exertions and services in the wars, in which the mother country was involved, their sacrifices in defence of their settlements, their splendid, though often unrequited labors for the advancement of English glory and English power, must all be thoroughly studied before any stranger can comprehend the nature or the causes of the revolution. It will otherwise remain a profound mystery, how a little tax upon tea should have kindled a general indignation; or how the assertion of a right by the British Parliament to tax us without representation, urged almost as an abstract theory, with scarcely any practical oppression, should have brought on a contest with thirteen colonies, having separate interests and objects, and united them at once in a common warfare for life, liberty, and independence. The author himself has, however, so well explained his motives for the undertaking in a preface, written with so much clearness and simplicity, that we willingly transcribe it into our pages, as a far more satisfactory vindication, than any, which we could presume to offer.

‘So large a portion of the life of General Washington was devoted to the public, so elevated and important were the stations which he filled, that the history of his life is, at the same time, the history of his nation.

‘The part he took, while commander in chief, in the civil as well as military affairs of the United States, was so considerable, that few events of general interest occurred, which were not, in some degree, influenced by him. A detail of the transactions in which he was either immediately or remotely concerned, would comprehend so great a part of those, which belong to general history, that the entire exclusion of the few, in which he bore no part, while it would scarcely give to the work more of the peculiar character of biography, would expose it to the charge of being an incomplete history of the times.

‘His administration of the government, while president of the United States, cannot be well understood without a full knowledge of the political measures of the day, and of the motives by which his own conduct was regulated.

‘These considerations appeared to require, that his biography

should present a general historical view of the transactions of the time, as well as a particular narrative of the part performed by himself.

‘ Our ideas of America, of the character of our revolution, of those who engaged in it, and of the struggles by which it was accomplished, would be imperfect without some knowledge of our colonial history. No work had been published, when this was undertaken, from which that knowledge could be collected. To have taken up the history of the United States, when the command of the army was conferred on General Washington, would have been to introduce the reader abruptly into the midst of scenes and transactions, with the causes of which, and with the actors in them, he would naturally wish to be intimately acquainted. This was the apology of the author for the introductory volume to the *Life General Washington*. Had the essays since written towards a general history of the English colonies been then in possession of the public, this volume would not have appeared. But, although they might have prevented its appearance, they ought not to prevent its being corrected and offered to the public in a form less exceptionable, than that which it originally bore. From the extreme, I may add unpardonable, precipitation with which it was hurried to the press, many errors were overlooked, which, on a perusal of the book, were as apparent to the author as to others. He was desirous of correcting these errors, and of making the work more worthy of the public, to which it was offered, as well as more satisfactory to himself. For this purpose he has given it, since the impressions, under which it was compiled, have worn off, more than one attentive reading; has made several alterations in the language; and has expunged much of the less essential matter, with which the narrative was burthened. He dares not flatter himself, that he has succeeded completely in his attempt to entitle this work to the approbation of the literary public of America; but hopes that its claims to that approbation are stronger than in its original form.

‘ Believing that motives no longer exist for connecting the History of the English Colonies in North America with the *Life of Washington*, the author has obtained permission of the proprietor of the copyright to separate the Introduction from the other volumes, and to publish it as a distinct work.’

The task of revision, thus modestly announced, has been performed with scrupulous care, and with some severity of judgment on the part of the learned author. He has obviously gone over the work with a keen and searching eye, and has given it the benefit of the corrections furnished by his most mature review. He has submitted it to a compression rare

among authors, and instead of increasing its size, he has exercised a praiseworthy diligence in condensing the contents into the smallest space. The introduction to the *Life of Washington* extended over a space of seven hundred and twentytwo pages, occupying a volume and a half. In its revised form it is now moulded into a single volume, of four hundred and fiftyseven pages of the same size.

Before entering farther upon any consideration of the nature, importance, or execution of the work, we must be allowed to indulge ourselves in withdrawing for a short time the attention of our readers from the book to the man. In short, we wish to present them with a sketch of his life and public services, and refresh ourselves and them with the contemplation of a character, in which there is nothing of inconsistency to regret, and much, very much, to incite to laudable ambition. In so doing we trust, that we shall gratify many of our readers. The young cannot be presumed to have an intimate knowledge of the labors and services of their fathers; and the aged may revive some scenes of departed time, and retrace with pleasure some faded reminiscences, by gathering up the fragments of the interesting life of a contemporary. The period has not yet arrived, in which we may venture to draw aside the veil, which conceals from the public gaze those personal traits and anecdotes, those warm touches of taste and character, those instances of familiar kindness, of elegant simplicity, and of attractive virtue, which belong to the biography of the great and good, when the grave has quietly closed over them. We hope, that the period is distant, is far distant, which shall demand from some kindred mind the performance of such solemn and affecting obsequies. The exclamation of the poet will now find a corresponding response, *serus in cælum redeas*, undebased by the slightest admixture of flattery.

But though we may not invade the privacy of domestic and social life, we deem ourselves at liberty to deal with the public acts and character of such a man, for they belong to the records and fame of his country. They have already become a part of our history, and are interwoven with some of the proudest events in our annals. The venerable age, too, of Mr Marshall, while it equally removes from us and him every other wish, than to close his life in the performance of the duties of his present office, imparts to every thought somewhat of the sobriety and softened charm, which belong to the memory of

those, whose career is already finished. We view him as almost on the confines of a past age, and as the connecting link, which binds us to our revolutionary statesmen and heroes. If therefore our sketch be, as it must necessarily be, imperfect, we trust it will not be unacceptable to those, who contemplate the struggles of the past with lofty sensibility, or look to our future glory with honest pride, as settled on the immoveable and broad foundations of the union.

Mr Chief Justice Marshall is the son of the late Colonel Thomas Marshall, and was born on the 24th of September, 1755, in Fauquier, then one of the frontier counties of the state of Virginia. He is the eldest of fifteen children, of whom seven are now living ; and we have often heard it repeated by those, who were well acquainted with the family, that all the children, the females as well as the males, possessed superior intellectual endowments. His father was a planter of a very small fortune, and had received a limited education. Nature, however, had been very bountiful to him. His talents were of a high order, and he assiduously cultivated and improved them, so that he maintained through life the reputation of being an extraordinary man. No father ever possessed more unboundedly the admiration and reverence of his children. We have often listened with delight to the tribute of praise bestowed on him by filial affection, and heard the declaration from the lips of one of his most gifted sons, that his father was an abler man than any of his children.

In the local position of the family, almost upon the frontier settlements, it was of course, that the early education of his children should devolve upon its head. Colonel Marshall superintended the studies of his son, and gave him an early and decided taste for history and poetry. At the age of twelve, John had transcribed Pope's Essay on Man, and also some of his moral essays. The love for poetry, thus awakened in his warm and vigorous mind, has never ceased to exert over it a commanding influence. Unless we are greatly misinformed, the enthusiasm of his youth often engaged him in the gay imaginings and fond indulgences of the muse ; and throughout every period of his life, he has read with intense interest the lighter as well as the loftier productions of the divine art. The contrast, indeed, is somewhat singular between that close reasoning, which almost rejects the aid of ornament in his juridical labors, and that generous taste, which devotes itself with delight to the works of fiction and song.

There being at that time no grammar school in the part of the country, where Colonel Marshall resided, his son was sent, at the age of fourteen, about a hundred miles from home, and placed under the tuition of a Mr Campbell, a clergyman of great respectability. He remained with him a year, and then returned home, and was put under the care of a Scotch gentleman, who was just introduced into the parish, as pastor, and resided in his father's family. He pursued his classical studies under this gentleman's direction, while he remained in the family, which was about a year, and at the termination of it he had commenced reading Horace and Livy. His subsequent mastery of the classics was the result of his own efforts, without any other aid than his grammar and dictionary. He never had the benefit of an education at any college, and his attainments in learning have been nursed by the solitary vigils of his own genius. His father, however, continued to superintend his English education, to cherish his love of knowledge, to give a solid cast to his acquirements, and to store his mind with the most valuable materials. He was not merely a watchful parent, but an instructive and affectionate friend, and soon became the most constant, as he was almost the only intelligent companion of his son. The time not devoted to his society was passed in hardy athletic exercises, and probably to this circumstance is owing that robust constitution, which yet seems fresh and firm in a green old age.

About the time when young Marshall entered his eighteenth year, the controversy between Great Britain and her American colonies began to assume a portentous aspect, and engaged, and indeed absorbed, the attention of all the colonists, whether they were young, or old, in private and secluded life, or in political and public bodies. He entered into it with all the zeal and enthusiasm of a youth, full of love for his country and liberty, and deeply sensible of its rights and its wrongs. He devoted much time to acquiring the first rudiments of military exercise in a voluntary independent company, composed of gentlemen of the county, to training a militia company in the neighborhood, and to reading the political essays of the day. For these animating pursuits, the preludes of public resistance, he was quite content to relinquish the classics, and the less inviting, but with reference to his future destiny, the more profitable Commentaries of Sir William Blackstone.

In the summer of 1775, he received an appointment as first

lieutenant, in a company of minute-men enrolled for actual service, who were assembled in battalion on the first of the ensuing September. In a few days they were ordered to march into the lower country, for the purpose of defending it against a small regular and predatory force commanded by lord Dunmore. They constituted part of the troops destined for the relief of Norfolk; and Lieutenant Marshall was engaged in the battle of the Great Bridge, where the British troops, under Lord Dunmore, were repulsed with great gallantry and firmness. The way being thus opened by the retreat of the British, he marched with the provincials to Norfolk, and was present when that city was set on fire by a detachment from the British ships, then lying in the river, and afterwards when the remaining houses were burnt by orders from the committee of safety, and the place evacuated.

In July, 1776, he was appointed first lieutenant in the eleventh Virginia regiment on the continental establishment; and in the course of the succeeding winter, he marched to the north, where, in May, 1777, he was promoted to the rank of captain. He was subsequently engaged in the skirmish at Iron Hill with the light infantry, and fought in the memorable battles of Brandywine, Germantown, and Monmouth.

That part of the Virginia line, which was not ordered to Charleston (S. C.), being in effect dissolved by the expiration of the term of enlistment of the soldiers, the officers (among whom was Captain Marshall) were, in the winter of 1779–80, directed to return home, in order to take charge of such men as the state legislature should raise for them. It was during this season of inaction, that he availed himself of the opportunity of attending a course of law lectures given by Mr Wythe, afterwards chancellor of the state, and a course of lectures on natural philosophy, given by Mr Madison, President of William and Mary College in Virginia. He left this College in the summer vacation of 1780, and obtained a license to practise law. In October he returned to the army, and continued in service until the termination of Arnold's invasion. After this period, and before the invasion of Phillips, in February, 1781, there being a redundancy of officers in the Virginia line, he resigned his commission.

This redundancy of officers was the leading motive for his resignation, since it left him at liberty, consistently with the most scrupulous devotion to his country, to consult his own



future prospects in life, and to favor the advancement of his companions in arms. In fact, however, he may be said to have been in service during the whole war, and to have had an ample share in the brunt of battle, and in the difficulties, discouragements, and sufferings, with which the American army was surrounded in the most gloomy of its campaigns. That he served with great distinction, and was equally remarkable for courage, intelligence, and activity, is attested by many of his fellow officers, with whom he was then, and has ever since continued to be, a favorite. We cannot refrain from inserting a paragraph on this subject, copied from a recent publication as the testimony of an eye-witness.—‘When the writer of this article first saw him,’ says the sketch, ‘he held the commission of captain in that regiment’ (meaning the regiment on the continental establishment, commanded by his father, Colonel Marshall). ‘It was in the trying, severe winter of 1777–8, a few months after the disastrous battles of Brandywine and Germantown had tested his firmness, hardihood, and heroism. The spot, where we acquired our earliest information of him, was the famous hutted encampment at Valley Forge, about thirty miles from Philadelphia. By his appearance then, we supposed him about twentytwo or twentythree years of age. Even so early in life, we recollect, that he appeared to us *primus inter pares*, for amidst the many commissioned officers he was discriminated for superior intelligence. Our informant, Colonel Ball, of another regiment in the same line, represented him as a young man, not only brave, but signally intelligent. Indeed, all those, who intimately knew him, affirmed, that his capacity was held in such estimation by many of his brother officers, that in many disputes of a certain description he was constantly chosen arbiter; and that officers, irritated by differences or animated by debate, often submitted the contested points to his judgment, which being given in writing, and accompanied, as it commonly was, by sound reasons in support of his decision, obtained general acquiescence.’ Such is the testimony of a contemporary, and we have no doubt of its entire correctness.

During the invasion of Virginia, the courts of law were suspended, and were not reöpened until after the capitulation of Lord Cornwallis. Immediately after that event Mr Marshall commenced the practice of law, and soon rose into distinction at the bar. We believe, that he has been accustomed to attribute

his early advancement, and lucrative practice to his extensive acquaintance among the officers of the army, the termination of hostilities having returned them to their families, and scattered them widely over his native state. We have no doubt that the Virginia officers took a deep interest in his favor; and the fact is honorable to their discernment, and a strong proof of his excellent qualities. And it is not improbable, that his success may have been somewhat aided by their commendation and support. But in our judgment his success was mainly owing to his own great talents and exertions. He was strictly the founder of his own fortune, in the sense of Cicero *ipse conditor totius negotii*; and the solid superstructure of his fame then rested, and now rests on the deep foundations of his own mind.

In the spring of 1782, he was elected a member of the state legislature, and in the autumn of the same year he was elected a member of the executive council. In January 1783, he married Miss Ambler, the daughter of a gentleman, who was then treasurer of the state, and to whom he had become attached before he left the army. This lady is still living to partake and to enjoy the distinguished honors of her husband. In 1784, he resigned his seat at the council board, in order to return to the bar; and he was immediately afterwards again elected a member of the legislature for the county of Fauquier, of which he was then only nominally an inhabitant, his actual residence being, as a member of the council, at Richmond. In 1787, he was elected a member from the county of Henrico, of which Richmond is the shire town; and though at that time earnestly engaged in the duties of his profession, he embarked largely in the political questions, which then agitated the state, and indeed the whole confederacy.

Every person at all read in our domestic history must recollect the dangers and difficulties of those days. The termination of the revolutionary war left the country drained of money, and impoverished and exhausted by its expenditures, and the national finances at a low state of depression. The powers of Congress under the confederation, which, even during the war, were often prostrated by the neglect of a single state to enforce them, became in the ensuing peace utterly relaxed and inefficient. Indeed, it was easy to foresee, if daily experience did not render all prophecy unnecessary, that since Congress could, under the confederation, act only by requisitions on the

states, these requisitions could be no more than recommendations, and these recommendations could be perpetually disregarded by the states from self-interest, local jealousy, or popular prejudice. Even the wretched expedient of clothing Congress with the power of laying an impost of five per cent., to provide for the discharge of the public debts and engagements, was defeated by the obstinate refusal of a single state. So that, in fact, there was a virtual dissolution of the confederation, and Congress was left at once powerless and moneyless, without influence and without support. 'Requisitions,' says General Washington, in a letter written to Mr Jay in 1786, 'are a perfect nullity, where thirteen independent, disunited states are in the habit of discussing and refusing, or complying with them at their option. Requisitions are actually little better than a jest, and a by-word throughout the land. If you tell the legislatures they have violated the treaty of peace, and invaded the prerogatives of the confederacy, they will laugh in your face. What then is to be done? Things cannot go on in the same train for ever. It is much to be feared, as you observe, that the better kind of people, being disgusted with these circumstances, will have their minds prepared for any revolution whatever. We are apt to run from one extreme into another. To anticipate and prevent disastrous contingencies would be the part of wisdom and patriotism.' Wise and just as these reflections are, the father of his country felt, that they could have even from him very little influence. In the same letter he adds, 'nor could it be expected, that my sentiments and opinions would have much weight on the minds of my countrymen. They have been neglected, though given as a last legacy in the most solemn manner, [alluding to his circular to the governors of the states, when he was about resigning the command of the army.] I had then perhaps some claims to public attention. I consider myself as having none at present.'

Such was the melancholy foreboding of the late commander-in-chief, in respect to the country, which he had saved by his valor. In the mean time the universal poverty and distress spread dismay and dissatisfaction throughout the Union. Credit, private as well as public, was destroyed. Agriculture and commerce were crippled. The delicate relation of debtor and creditor became daily more and more embarrassed and embarrassing; and, as is usual upon such occasions, every sort of expedient was resorted to by popular leaders, as well as by men of desperate

fortunes, to inflame the public mind, and to bring into odium those, who labored to preserve the public faith, and establish a more energetic government. The whole country was soon divided into two great parties, the one of which endeavored to put an end to the public evils by the establishment of a government over the Union, which should be adequate to all its exigencies, and act directly on the people ; the other was devoted to state authority, jealous of all federal influence, and determined at every hazard to resist its constitutional increase. And notwithstanding the elaborate discussions in the general and state conventions, the powerful appeals of our wisest patriots and statesmen through the press and in private circles, and the general consciousness of our perilous situation, it is, after all, a problem more than doubtful, whether the national constitution would ever have been adopted, if Shays's rebellion in Massachusetts had not, by its sudden and alarming terrors, taught us, that we were already, not on the brink, but in the midst of a civil war,—a war, waged by licentious or distressed men against property and government of every sort,—a war, whose object it was to overthrow the administration of public justice, and to annul those laws, which guard the sacredness of private contracts.

It is almost unnecessary to say, that Mr Marshall could not remain an idle or indifferent spectator of such scenes. As little doubt could there be of the part he would take in such a contest. He was at once arrayed on the side of Washington and Madison. In Virginia, as everywhere else, the principal topics of the day were paper money, the collection of taxes, the preservation of public faith, and the administration of civil justice. The parties were nearly equally divided upon all these topics ; and the contest concerning them was continually renewed. In such a state of things, every victory was but a temporary and questionable triumph, and every defeat still left enough of hope to excite to new and strenuous exertions. The affairs, too, of the confederacy were then at a crisis. The question of the continuance of the Union, or a separation of the states, was freely discussed ; and, what is almost startling now to repeat, either side of it was maintained without reproach. Mr Madison was at this time, and had been for two or three years, a member of the House of Delegates, and was in fact the author of the resolution for the general convention at Philadelphia to revise the confederation. He was at all times the

enlightened advocate of union, and of an efficient federal government, and he received on all occasions the steady support of Mr Marshall. We have often witnessed, with no ordinary emotions, the pleasure, with which both of these gentlemen look back upon their coöperation at that period, and the sentiments of profound respect, with which they habitually regard each other.

Both of them were members of the convention, subsequently called in Virginia, for the ratification of the federal constitution. This instrument, having come forth under the auspices of General Washington and other distinguished patriots of the Revolution, was at first favorably received in Virginia. But it soon encountered the decided hostility of Mr Patrick Henry, Mr George Mason, and several other gentlemen of great influence, who, with a zeal and ability worthy of a better cause, labored to disparage it, and succeeded to a high degree in exciting the prejudices of the people against it. In the legislature of Virginia it soon gave rise to very animated debates, and before the close of the session, preceding the convention, the enemies of the constitution had, by their unceasing efforts, spread disaffection and hostility to it in every direction. Its defence was uniformly and most powerfully maintained there by Mr Marshall.

The debates of the Virginia convention are in print. But we have been assured by the highest authority, that the printed volume affords but a very feeble and faint sketch of the actual debates on that occasion, or of the vigor, with which every attack was urged, and every onset repelled against the constitution. The best talents of the state were engaged in the controversy. Against the constitution were arrayed the captivating and popular eloquence of Henry, the grave sense of Mason, and the energetic zeal of Grayson. In its support were enlisted the venerable wisdom of Pendleton, the accomplished elegance of Randolph, the steady perseverance of Nicholas, the close and comprehensive logic of Marshall, and the unwearied diligence and inexhaustible knowledge of Madison. The principal debates were conducted by Henry and Madison, as leaders. But on three great occasions, namely, the debates on the power of taxation, the power over the militia, and the power of the judiciary, Mr Marshall gave free scope to his genius, and argued with a most commanding ability. We can trace, even through the dim lights reflected in the printed speeches, many of those sa-

gacious and statesmenlike views, which have characterized his subsequent life. We see there the germs of those great constitutional principles, which he has since so largely contributed to establish, and which, if any thing can, will give immortality to this great instrument of our national liberties. Take, for instance, the following extract from his speech on the power of taxation.

‘Let me pay attention to the observation of the gentleman, who was last up, that the power of taxation ought not to be given to congress. This subject requires the undivided attention of this house. This power I think essentially necessary, for without it there will be no efficiency in the government. We have had a sufficient demonstration of the vanity of depending on requisitions. How then can the general government exist without this power? The possibility of its being abused is urged, as an argument against its expediency. To very little purpose did Virginia discover the defects in the old system—to little purpose indeed did she propose improvements—and to no purpose is this plan constructed for the promotion of our happiness, if we refuse it now, because it is possible, that it may be abused. The confederation has nominal powers, but no means to carry them into effect. If a system of government were devised by more than human intelligence, it would not be effectual, if the means were not adequate to the power. All delegated powers are liable to be abused. Arguments drawn from this source go in direct opposition to every government, and in recommendation of anarchy. The friends of the constitution are as tenacious of liberty, as its enemies. They wish to give no power, that will endanger it. They wish to give the government powers to secure and protect it. Our inquiry here must be, whether the power of taxation be necessary to perform the objects of the constitution, and whether it be safe and as well guarded as human wisdom can do it. What are the objects of the national government? To protect the United States, and to promote the general welfare. Protection in time of war is one of its principal objects. Until mankind shall cease to have ambition and avarice, wars will arise. The prosperity and happiness of the people depend on the performance of these great and important duties of the general government. Can these duties be performed by one state? Can one state protect us, and promote our happiness? The honorable gentlemen, who has gone before me (Governor *Randolph*), has shown, that Virginia cannot do these things. How then can they be done? By the national government only. Shall we refuse to give it power to do them? We are answered, that the powers may be abused; that though the

congress may promote our happiness, yet they may prostitute their powers to destroy our liberties. 'This goes to the destruction of all confidence in agents. Would you believe that men, who had merited your highest confidence, would deceive you? Would you trust them again after one deception? Why then hesitate to trust the general government? The object of our inquiry is—*Is the power necessary—and is it guarded?* There must be men and money to protect us. How are armies to be raised? Must we not have money for that purpose? But the honorable gentleman says, that we need not be afraid of war. Look at history, which has been so often quoted. Look at the great volume of human nature. They will foretell you, that a defenceless country cannot be secure. The nature of man forbids us to conclude, that we are in no danger from war. The passions of men stimulate them to avail themselves of the weakness of others. The powers of Europe are jealous of us. It is our interest to watch their conduct, and guard against them. They must be pleased with our disunion. If we invite them by our weakness to attack us, will they not do it? If we add debility to our present situation, a partition of America may take place. It is then necessary to give the government that power in time of peace, which the necessities of war will render indispensable, or else we shall be attacked unprepared. The experience of the world, a knowledge of human nature, and our own particular experience, will confirm this truth. When danger will come upon us, may we not do what we were on the point of doing once already, that is, appoint a dictator? Were those, who are now friends of this constitution, less active in the defence of liberty on that trying occasion, than those, who oppose it? When foreign dangers come, may not the fear of immediate destruction by foreign enemies impel us to take a most dangerous step? Where then will be our safety? We may now regulate and frame a plan, that will enable us to repel attacks, and render a recurrence to dangerous expedients unnecessary. If we be prepared to defend ourselves, there will be little inducement to attack us. But if we defer giving the necessary power to the general government, till the moment of danger arrives, we shall give it then, and with an *unsparing hand*. America, like other nations, may be exposed to war. The propriety of giving this power will be proved by the history of the world, and particularly of modern republics. I defy you to produce a single instance, where requisitions on the several individual states, composing the confederacy, have been honestly complied with. Did gentlemen expect to see such punctually complied with in America. If they did, our own experience shows the contrary.' pp. 166, 167.

And again, from his speech on the militia.

‘ Mr *John Marshall* asked if gentlemen were serious, when they asserted, that if the state governments had power to interfere with the militia, it was by implication? If they were, he asked the committee, whether the least attention would not show, that they were mistaken? The state governments did not derive their powers from the general government. But each government derived its powers from the people; and each was to act according to the powers given it. Would any gentleman deny this? He demanded if powers, not given, were retained by implication? Could any man say so? Could any man say, that this power was not retained by the states, as they had not given it away? For, says he, does not a power remain till it is given away? The state legislatures had power to command and govern their militia before, and have it still, undeniably, unless there be something in this constitution, that takes it away. For continental purposes, congress may call forth the militia, as to suppress insurrections and repel invasions. But the power given to the states by the people is not taken away; for the constitution does not say so. In the confederation, congress had this power. But the state legislatures had it also. The power of legislation, given them within the ten miles square, is exclusive of the states, because it is expressed to be exclusive. The truth is, that when power is given to the general legislature, if it was in the state legislatures before, both shall exercise it; unless there be an incompatibility in the exercise by one, to that by the other; or negative words precluding the state governments from it. But there are no negative words here. It rests therefore with the states. To me it appears then unquestionable, that the state governments can call forth the militia, in case the constitution should be adopted, in the same manner, as they could have done before its adoption. Gentlemen have said, that the states cannot defend themselves without an application to congress, because congress can interpose! Does not every man feel a refutation of the arguments in his own breast? I will show, that there could not be a combination between those who formed the constitution, to take away this power. All the restraints intended to be laid on the state governments (besides where an exclusive power is expressly given to congress) are contained in the tenth section of the first article. This power is not included in the restrictions in that section. But what excludes every possibility of doubt, is the last part of it; that “no state shall engage in war, *unless actually invaded, or in such imminent danger, as will not admit of delay.*” When invaded, they can engage in war; as also when in imminent danger. This clearly proves, that the states can use the militia, when they find it necessary. The worthy member last up objects to the continental government possessing the power of disciplining



the militia, because, though all its branches be derived from the people, he says, they will form an aristocratic government, unsafe and unfit to be trusted.

'Mr *Grayson* answered, that he only said it was so constructed, as to form a great aristocratic body.

'Mr *Marshall* replied, that he was not certain whether he understood him; but he thought he had said so. He conceived, that as the government was drawn from the people, the feelings and interests of the people would be attended to, and that we should be safe in granting them power to regulate the militia. When the government is drawn from the people, continued Mr *Marshall*, and depending on the people for its continuance, oppressive measures will not be attempted, as they will certainly draw on their authors the resentment of those on whom they depend. On this government, thus depending on ourselves for its existence, I will rest my safety, notwithstanding the danger depicted by the honorable gentleman. I cannot help being surprised, that the worthy member thought this power so dangerous. What government is able to protect you in time of war? Will any state depend on its own exertions? The consequence of such dependence and withholding this power from Congress will be, that state will fall after state, and be a sacrifice to the want of power in the general government. *United we are strong, divided we fall*. Will you prevent the general government from drawing the militia of one state to another, when the consequence would be, that every state must depend on itself? The enemy, possessing the water, can go quickly from one state to another. No state will spare to another its militia, which it conceives necessary for itself. It requires a superintending power, in order to call forth the resources of all to protect all. If this be not done, each state will fall a sacrifice. This system merits the highest applause in this respect.' pp. 297—299.

It is very difficult for the present generation to conceive the magnitude of the dangers, to which we were then exposed, or to realize the extent of the obstacles, which were opposed to the adoption of the constitution. Notwithstanding all the sufferings of the people, the acknowledged imbecility of the government, and the almost desperate state of our public affairs, there were men of high character, and patriots too, who clung to the old confederation with an enthusiastic attachment, and saw in the grant of any new powers, indeed of any powers to a national government, nothing but oppression and tyranny,—slavery of the people and destruction of the state governments on the one hand, and universal despotism and overwhelming

taxation on the other. Time, the great umpire and final judge of these questions, has indeed now abundantly shown, how vain were the fears, and how unsound the principles of the opponents of the constitution. The prophecies of its friends have been abundantly fulfilled in the growth and solid prosperity of their country, far indeed beyond their most sanguine expectations. But our gratitude can never be too warm to those eminent men, who stemmed the torrent of public prejudice, and with a wisdom and prudence, almost surpassing human power, laid the foundations of that government, which saved us at the hour, when we were ready to perish. After twentyfive days of ardent and eloquent discussion, to which justice never has been, and never can now be done, (during which nine states adopted the constitution) the question was carried in its favor in the convention of Virginia by a majority of ten votes only. Mr Henry lived long enough to acknowledge in its practical operations the sincerest pleasure, to admit his own mistakes, and to give it his sincere support. But such has not been the general result of the contest in Virginia. On the contrary, the principles then avowed by the opposition, and maintained with so much zeal, have sunk deep into the minds of those, who have since guided her public councils. And it may now be said without the suspicion of political reproach, that Virginia has throughout almost all the intermediate period controverted the powers of the general government with unceasing vigilance, and stood forth the steady and jealous advocate of state rights.

To those, indeed, who are well acquainted with the political feelings in Virginia at the period, of which we have been speaking, it may be matter of surprise, that Mr Marshall was returned a member of the convention, for the county in which he resided was then (to use the language, which distinguished the parties) decidedly antifederal. But party spirit had not become so bitter and unrelenting, as to extinguish the courtesies of private life, or to overcome those strong affections, which public services, ardent patriotism, and high talents naturally excite. In several of the counties most opposed to the constitution, individuals of commanding influence and character, who were its known advocates, were chosen delegates from mere personal motives and attachments.

The adoption of the constitution of the United States having been thus secured, Mr Marshall immediately formed the determination to relinquish public life, and to devote himself to the

arduous duties of his profession. To this determination he was led by very pressing considerations. His fortune was not yet made ; his practice had become extensive ; his sacrifices had already been considerable. To maintain a high standing in the legislature, proportionate to his talents and character, would require so much time, that it would essentially trench upon other pursuits. To yield up his profession as a secondary object, would be to subject himself to a voluntary dependence for life. His friends were exceedingly anxious, that he should be a candidate for Congress, so that he might assist in the first organization of the government. And notwithstanding the district was antifederal, such was his personal popularity, that no doubt existed of his success. He listened, however, to the dictates of prudence, and voluntarily retired from a station, where an honorable ambition, like his, could not have failed to have reaped an ample reward of fame.

A man of his eminence could however with very great difficulty adhere rigidly to his original resolve. The state legislature having, in December 1788, passed an act allowing a representative to the city of Richmond, Mr Marshall was almost unanimously invited to become a candidate. No doubt could exist in respect to his return, for the city was federal. With considerable reluctance he yielded to the public wishes, being principally influenced in his acceptance of the station by the increasing hostility manifested in the state against the national government, and his own anxious desire to give the latter his decided and public support. He continued in the legislature, as a representative of Richmond for the years 1789, 1790, and 1791. During this period every important measure of the national government was discussed in the state legislature with great freedom and no inconsiderable acrimony. In particular, the funding system was attacked and censured in strong terms, and that part of it especially, which assumed the state debts, was pronounced unconstitutional. Thus early did Virginia avow the doctrines, which have so distinctly marked her subsequent course, and insist upon the closest abridgment of the national powers. On these occasions Mr Marshall vindicated the national government with a manly and zealous independence.

After the termination of the session of the legislature, in 1791, Mr Marshall voluntarily retired. But the events, which soon afterwards occurred in Europe, and extended a most awakening influence to America, did not long permit him to devote

himself to professional pursuits. The French Revolution in its early dawn was hailed with universal enthusiasm in America. In its progress for a considerable period it continued to maintain among us an almost unanimous approbation. Many causes conduced to this result. Our partiality for France, from a grateful recollection of her services in our own revolutionary contest, was ardent and undisguised. It was heightened by the consideration, that she was herself now engaged in a struggle for liberty, and was endeavoring to shake off oppressions, under which she had been groaning for centuries. The monarchs in Europe were combined in a mighty league for the suppression of this new and alarming insurrection against the claims of legitimacy. It was not difficult to foresee, that if they were successful in this enterprise, we ourselves had but a questionable security for our own independence. It would be natural for them, after having completed their European conquests, to cast their eyes to the origin of the evil, and to feel, that their dynasties were not quite safe, even though the Atlantic rolled between us and them, while a living example of liberty, so seductive and so striking, remained in the western hemisphere.

Nor was our danger wholly imaginary. It is hardly possible, at this distance of time, to look back without a deep feeling, that the feebleness of our national government, the deficiency of revenue and resources, the discontents at home, the internal jealousies which distracted the states, and the want of any firm public credit, exposed us to serious difficulties. If our safety was to depend upon the mere sense of moderation of the crowned heads of Europe, flushed with their recent triumph over the political liberty of France, it must be admitted, that it was somewhat shadowy and unsubstantial. In case of any combined invasion or systematic attack, we were embarrassed on one side with local divisions, and on the other with the discouraging fact, that the armies, which had achieved our independence, had the most lively and well-founded recollections of the past ingratitude of their country. Under such circumstances, the opinion was almost universal and instantaneous, that our own liberty was essentially connected with the success of France ; and patriots and statesmen, the young and the old, the contemplative and the active, gave way to feelings of unbounded exultation at every defeat of her enemies, and of admiration at the heroic deeds of her children. It may be

truly said, that the government itself partook largely of the general interest, and did not hesitate to express it in any manner not incompatible with the strict performance of the duties of neutrality. Mr Marshall was as warmly attached to the cause of France, as any of his considerate countrymen.

After the death of Louis the Sixteenth, feelings of a different sort began to mix themselves, not only in the public councils, but in private life. Those, whose reflections reached beyond the events of the day, began to entertain fears, lest in our enthusiasm for the cause of France, we might be plunged into war, and thus jeopard our own vital interests. The task of preserving neutrality was of itself sufficiently difficult, when the mass of the people was put in motion by the cheering sounds of liberty and equality, which were wafted on every breeze across the Atlantic. The duty, however, was imperative; and the administration determined to perform it with the most guarded good faith. In the mean time the arrival of M. Genet, as Minister from the Republic of France, created throughout the continent a great sensation. He was every where received with acclamations on his journey from South Carolina to Philadelphia; and even before he was accredited by the government, he undertook to authorize the armament of vessels in our ports, and to enlist men and grant commissions for hostilities against nations, with which we were at peace. It was soon perceived, that taking advantage of the general enthusiasm, he was beginning to intrude himself between the government and the people; to make the latter the instruments of overthrowing the administration; and thus to precipitate us into the war. Such conduct roused the attention of all America, and taught our ablest statesmen the necessity of immediate resistance. No one, who truly loved his country, could be insensible of the danger of permitting any foreign minister to mingle in the management of our domestic affairs; or of the calamitous results of abandoning our neutrality. One of the earliest meetings, called to express the public sentiments on this subject, was in the city of Richmond; and on that occasion, resolutions were passed, expressing a strong disapprobation of the irregular conduct of M. Genet, a deep sense of the danger of foreign influence, and a warm approbation of the President's proclamation of neutrality. These resolutions, and the address to the President, which accompanied them, were drawn up and supported by Mr Marshall, and carried by his strenuous exertions.

The great political parties, which for so many years afterwards divided the country, began about this period to assume a more distinct form, and to acquire a more unequivocal character. Hitherto the struggle had been principally confined to domestic concerns ; to federal and antifederal measures ; on the one side to building up and cherishing a system, which should strengthen the union and give vigor to its councils, and on the other side to resisting every approximation to a diminution of state influence. But now the contest took a wider range, and foreign politics first engaged, and soon absorbed the whole attention of the people. Many ardent votaries of liberty clung with an animated devotion to the cause of France through all her various fortunes ; and felt, that even her encroachments upon our own rights were not without apology, and though not justifiable, were not to be openly resented. The administration and its friends acted upon other principles ; and though not insensible to the value of the friendship of France, they saw much in her conduct, which required resistance, and much in the conduct of other nations, and particularly of Great Britain, which demanded, if we meant to preserve peace, a sober consideration of our own interests. Great Britain yielded to our remonstrances, and finally consented to indemnify us for our national injuries. The policy of France was manifestly to detach us from our neutral position ; and every approach on our part to conciliation with the British government was watched by her with jealousy ; and her jealousy soon spread with increased force among her friends in America. In short, for it is now matter of history, and we are at liberty to deal with it as such, the parties soon became distinguished as the friends of France, and the enemies of France, or the friends of England, and the enemies of England, in the partisan vocabulary of the day.

The decided part taken by Mr Marshall could not long remain unnoticed. His constant effort upon all occasions was to show, that the conduct of our government in its foreign relations was such as a just self-respect and a regard to our rights, as a sovereign nation, rendered indispensable ; and that our independence was brought into real danger by the overgrown and inordinate influence of France. He was of course exposed to severe public animadversions, and felt in its full force the weight of those political resentments, which the known attachment of Virginia to the cause of France must inevitably

create. He was attacked with great asperity in the newspapers and pamphlets of the day, and designated, by way of significant reproach, as the coadjutor and friend of Alexander Hamilton. The name of this great man almost tempts us to pass aside for a moment to pay a just tribute to his exalted patriotism, talents, and public virtues. The lapse of more than twenty years since his lamented death has buried those animosities, which for a time obscured the brilliant lustre of his fame. But we must forbear. To have been the friend and coadjutor of Hamilton would now make many a heart beat with lofty pride; to have been his distinguished friend and coadjutor would now be deemed by the whole nation no mean title of praise.

Against these attacks Mr Marshall defended himself with a zeal and ability, proportioned to his own sincere devotion to the cause which he espoused. He soon found himself compelled to assume the character of an acknowledged leader of the federal party in Virginia, and from necessity or choice to change his determination as to public life; and he began to hesitate, whether he ought not immediately to reënter the legislature. While he was yet pausing, an event unexpectedly occurred, which decided his future course. The spring elections for the state legislature in the year 1795 came on. Mr Marshall was not a candidate, but he was nevertheless chosen under somewhat peculiar circumstances. From the time of his withdrawing from the legislature two opposing candidates had divided the city of Richmond; the one, his intimate friend, and holding the same political sentiments with himself; the other, a most zealous partisan of the opposition. Each election between these gentlemen, who were both popular, had been decided by a small majority, and the approaching contest was entirely doubtful. Mr Marshall attended the polls at an early hour, and gave his vote for his friend. While at the polls, a gentleman demanded, that a poll should be opened for Mr Marshall. The latter was greatly surprised at the proposal, and unhesitatingly expressed his dissent, declaring, that his wishes and feelings and honor were engaged for one of the candidates. At the same time, he announced his willingness to become a candidate the next year. He retired from the polls, and immediately gave his attendance to the business of one of the courts, which was then in session. A poll was, however, opened for him in his absence by the gentleman who first suggested it, notwithstanding his positive refusal. The

election was suspended for a few minutes ; a consultation took place among the freeholders ; they determined to support him ; and in the evening he received the information of his election. A more honorable tribute to his merits could not have been paid ; and his election was a most important and timely measure in favor of the administration.

It will be recollected, that the treaty with Great Britain, negotiated by Mr Jay in 1794, was the subject of universal discussion at this period. No sooner was its ratification advised by the Senate, than public meetings were called in all our principal cities, for the purpose of inducing the President to withhold his ratification, and if this object were not attained, then to prevent in Congress the passage of the appropriations necessary to carry it into effect. The first movement took place in Boston, and the excitement, there produced, spread through the country with astonishing rapidity and increased violence. The history of the country scarcely furnishes an example so full of melancholy instruction, as this, to illustrate the intoxicating influence of party spirit. There probably never was any measure of President Washington's administration, which admitted of a more complete vindication for its sound policy, its justice, and its advancement of the real interests of the nation. Yet it was assailed with the most unmeasured reproaches ; it was denounced in public resolutions and anonymous pamphlets ; in newspaper essays and political addresses ; in the grave debates of legislative assemblies, and the vehement harangues of popular orators. The topics of animadversion were not confined to the expediency of the treaty in its principal provisions, but the bolder ground was assumed, that the negotiation of a commercial treaty by the Executive was an unconstitutional act, and an infringement of the power given to Congress to regulate commerce. Mr Marshall took an active part in the discussions upon the treaty. Feeling, that the ratification of it was indispensable to the preservation of peace, that its main provisions were essentially beneficial to the United States, and comported with its true dignity and interests, he addressed himself with the most diligent attention to an examination of the nature and extent of all its provisions, and of all the objections urged against it. No state in the Union exhibited a more intense hostility to it than Virginia, upon the points both of expediency and constitutionality ; and in no state were the objections urged with more impassioned and unsparing



earnestness. The task, therefore, of meeting and overthrowing them was of no ordinary magnitude, and required all the resources of the ablest mind. Mr Marshall came to the task with a thorough mastery of every topic connected with it. At a public meeting of the citizens of Richmond he carried a series of resolutions, approving the conduct of the Executive.

But a more difficult and delicate duty remained to be performed. It was easy to foresee, that the controversy would soon find its way from the public forum into the legislative bodies ; and would be there renewed with the bitter animosity of party spirit. Indeed, so unpopular was the treaty in Virginia, that Mr Marshall's friends were exceedingly solicitous, that he should avoid engaging in any debate in the legislature on the subject, as it would be a sacrifice of the remains of his well deserved popularity ; and it might be even questioned, if he could there deliver his sentiments without exposure to some rude attacks. His answer to all such suggestions was uniform ; that he should not move any measure to excite a debate ; but if the subject were brought forward by others, he should, at every hazard, vindicate the administration, and assert his own opinions. He was incapable of shrinking from a just expression of his own independence. The subject was soon introduced by his political opponents, and the constitutional objections were urged with triumphant confidence. That particularly, which denied the constitutional right of the Executive to conclude a commercial treaty, was selected and insisted on, as a favorite and unanswerable position. The speech of Mr Marshall on this occasion has been always represented, as one of the noblest efforts of his genius. His vast powers of reasoning were employed with the most gratifying success. He demonstrated not only from the words of the Constitution, and the universal practice of nations, that a commercial treaty was within the constitutional powers of the Executive, but that this opinion had been maintained and sanctioned by Mr Jefferson, by the whole Delegation of Virginia in Congress, and by the leading members in the Convention on both sides. His argument was decisive ; the constitutional ground was abandoned ; and the resolutions of the Assembly were confined to a simple disapprobation of the treaty in point of expediency.

The constitutional objections were again urged in Congress in the celebrated debate on the British Treaty, in the spring of 1796 ; and there finally assumed the mitigated shape of a right

claimed on the part of Congress to grant or withhold appropriations to carry treaties into effect. The higher ground, that commercial treaties were not, when ratified, the supreme law of the land, was abandoned; and the subsequent practice of the government has, without question, under every administration conformed to the construction vindicated by Mr Marshall. The fame of this admirable argument spread through the Union. Even with his political enemies, it enhanced the elevation of his character; and it brought him at once to the notice of some of the most eminent statesmen, who then graced our public councils. In the winter of 1796, he attended the Supreme Court of the United States at Philadelphia, and argued the great cause of *Ware vs. Hylton*, involving the question of the operation of the British treaty upon the antecedent confiscations of British debts. On this occasion he formed an acquaintance with some of the most distinguished members of Congress from the eastern and middle states, and particularly with Mr Cabot, Mr Ames, and Mr Dexter of Massachusetts, Mr Wadsworth of Connecticut, and Mr Rufus King of New York. He was received with the most flattering distinction, and with some of these gentlemen he then commenced a friendship, which terminated only with their lives.

About this period President Washington invited Mr Marshall to accept the office of Attorney General; but he declined it, upon the ground of its interference with his lucrative practice in Virginia. He continued in the state legislature, but did not, from his other engagements, take an active part in the ordinary business. He confined his attention principally to those questions, which involved the main interests of the country, and brought into discussion the policy and the principles of the national parties. An occasion occurred, however, for the utmost exertion of his eloquence in a debate, which took place (we believe) in the winter session of 1796-7, and called forth all the strength of the opposition. Some federalist moved a resolution, expressive of the high confidence of the house in the virtue, patriotism, and *wisdom* of the president of the United States. A motion was made to strike out the word '*wisdom*.' A very animated debate ensued, in which the whole course of his administration was reviewed, and all the talents of each party were exerted to assail, or to vindicate it. Mr Marshall, as might be expected, maintained himself with his accustomed vigor. But after every exertion the

word was retained by a very small majority. It is indeed a painful and humiliating thought, that a small majority only could be found at that time in the legislature of his native state, willing to acknowledge the *wisdom* of General Washington!

Upon the recall of Mr Monroe as Minister from France, President Washington solicited Mr Marshall to accept the appointment as his successor. He respectfully declined it in a letter, which is now before us. 'Were it possible,' said he, 'for me in the present crisis of my affairs to leave the United States, such is my conviction of the importance of that duty, which you would confide to me, and pardon me, if I add, of the fidelity, with which I should attempt to perform it, that I would certainly forego any consideration, not decisive with respect to my future fortunes, and would surmount that just diffidence, I have ever entertained of myself, to make one effort to convey truly and faithfully to the government of France those sentiments, which I have ever believed to be entertained by that of the United States.' General Pinckney of South Carolina, as is well known, was appointed in his stead. Indeed, Mr Marshall's situation at the bar was so high, and so independent, that in point of honor it seemed little inferior to any office in the gift of the government. He had a strong predilection for the practice of the law, and felt the most unfeigned reluctance to quit it. The arrangements, also, consequent upon his purchase of a large and very valuable estate (to which allusion is made in the preceding letter), were of such a nature, as demanded his personal presence and coöperation. However gratifying to his ambition the high appointment of Minister to France must have been, the sacrifices and inconveniences, which would accompany it, might well induce even a more ardent and less occupied mind, to hesitate in accepting it.

Mr Marshall was not, however, long permitted to act upon his own judgment and choice. The French government refused to receive General Pinckney, as Minister from the United States; and the administration, being sincerely anxious to exhaust every measure of conciliation, not incompatible with the national dignity, for the preservation of peace, resorted to the extraordinary measure of sending a commission of three Envoys. Within a year from the time of the first offer, Mr Adams, having succeeded to the presidency, appointed Mr Marshall one of these Envoys in conjunction with General Pinckney and Mr Gerry. This was a new and embarrassing

exigency for Mr Marshall. All the reasons for declining the former appointment remained in full force; but they were met by other considerations growing out of the posture of our public affairs. The crisis was very alarming; the hope of a successful mission was not wholly uninviting; and the dangers of war, formidable to us at all times, in the divided state of the country were assuming a most unpleasant aspect. These considerations seemed to demand from a patriot and statesman some sacrifices to public duty.

Mr Marshall also could not be insensible, that the country confidently expected much from his known moderation, firmness, and prudence. He was perfect master of the whole controversy with France, and felt the deepest interest in its issue. He had the most unwavering belief, that our government anxiously desired an amicable adjustment of all our difficulties. He knew, that he should come to the negotiation breathing the spirit of conciliation, and with the most sincere wishes to accomplish a permanent and honorable peace. Nor could he fail to indulge the grateful anticipation, that if the mission were crowned with success, it would be a glorious discharge of public duty, and bring with it a solid increase of reputation. If, on the other hand, the mission were unsuccessful, being but of a temporary nature, it would not withdraw him for a long period from his professional pursuits; and would leave him the consolation, that he had not shrunk from fidelity to his country in her hour of difficulty.

After some hesitation, Mr Marshall accepted the appointment, and soon afterward embarked for Amsterdam. On his arrival at the Hague he met General Pinckney, and having received passports they proceeded to Paris. The mission was unsuccessful; the envoys were never accredited by the French government, and Mr Marshall returned to America in the summer of 1798.

It is not within the design of this sketch to enter into a full examination of the merits of this negotiation, so honorable to our own country, and, in our judgment, so disgraceful to France. The whole of the proceedings were laid before Congress by President Adams, and are now to be found among the printed state papers. Although General Pinckney was placed with great propriety at the head of the commission, and it is but a small tribute to his memory to declare, that he was a man of fine sense, and high and almost chivalric honor; yet the truth of

history requires it to be stated, that upon Mr Marshall principally devolved the duty of preparing the official despatches. They have been universally attributed to his pen, and are models of skilful reasoning, forcible illustration, accurate detail, and urbane and dignified moderation. In the annals of our diplomacy there are no papers, upon which an American can look back with more unmixed pride and pleasure. When they were first published, they created an astonishing excitement throughout the whole continent; and the public feeling was roused to the highest point of indignation at our wrongs and the gross insults offered to the nation in the persons of its Envoys. The fame of Mr Marshall received new lustre from his conduct on this occasion; and upon his return home he was received with enthusiastic demonstrations of respect, and immediately solicited to resume public life and become a candidate for Congress. During his absence he kept a journal of his diplomatic transactions, which we presume he still possesses; and we have seen letters addressed by him to General Washington, full of that wisdom, patriotism, and sound discernment, which formed the essential characteristics of both. At some future time we trust they will belong to the public.

The opinion of General Washington always had great influence with Mr Marshall, and to have been distinguished by him as a friend could not but be a flattering, perhaps the most flattering proof of merit. Mr Marshall on his return home found, that he had sustained no loss by a diminution of professional business, and looked forward to a resumption of his labors with higher hopes. He peremptorily refused for a considerable time to become a candidate for Congress, and avowed his determination to remain at the bar. At this juncture he was invited by General Washington to pass a few days at Mount Vernon; and having accepted the invitation, he went there in company with Mr Justice Washington, the nephew of General Washington, and now a highly distinguished Judge of the Supreme Court of the United States.

What took place upon that occasion, we happen to have the good fortune to know from an authentic source. General Washington did not for a moment disguise the object of his invitation; it was to urge upon Mr Marshall and Mr Washington the propriety of their becoming candidates for Congress. Mr Washington yielded to the wishes of his uncle without a struggle. But Mr Marshall resisted on the ground of his situation,

and the necessity of attending to his private affairs. The reply of General Washington to these suggestions will never be forgotten by those, who heard it. It breathed the spirit of the loftiest virtue and patriotism. He said, that there were crises in national affairs, which made it the duty of a citizen to forego his private for the public interest. He considered the country to be then in one of these. He detailed his opinions freely on the nature of the controversy with France, and expressed his conviction, that the best interests of America depended upon the character of the ensuing Congress. He adverted to his own situation. He had retired from the Executive Department with the firmest determination never again to appear in a public capacity. He had communicated this determination to the public, and his motives for it were too strong not to be well understood. Yet he was now pledged to appear once more at the head of the American army; and from this circumstance it must be evident, what were his own convictions of the duty imposed upon every citizen by the state of American affairs. The conversation was long and animated and impressive, full of the deepest interest, and the most unreserved confidence. The exhortation of General Washington had its effect. Mr Marshall yielded to his representations, and became a candidate, and was, after an ardent contest, elected, and took his seat in Congress in December, 1799. While he was yet a candidate, he was offered a seat on the bench of the Supreme Court, then vacant by the death of Mr Justice Iredell. Upon his declining it President Adams appointed Mr Justice Washington, who was thus prevented from becoming a member of Congress.

The session of Congress in the winter of 1799-1800 will for ever be memorable in the annals of America. Men of the highest talents and most commanding influence in the Union were there assembled, and arrayed with all the hostility of party spirit, and all the zeal of conscious responsibility, against each other. Every important measure of the administration was subjected to the most scrutinizing criticism; and was vindicated with a warmth proportionate to the ability of the attack. Mr Marshall took an active part in the debates, and on one occasion distinguished himself in a manner, which will not easily be forgotten. We refer to the debate on the resolutions of Mr Edward Livingston, then a member from New York, relative to the case of Thomas Nash *alias* Jonathan Robbins. The

facts were, that a murder had been committed on board the British frigate, *Hermione*, on the high seas, and Nash, who had sought an asylum in the United States, was accused of being one of the murderers. The twenty-seventh article of the British treaty of 1794 provided, that the respective governments of Great Britain and the United States should, on mutual requisitions by their ministers, deliver up to justice all persons, who being charged with murder or forgery within the jurisdiction of either, should seek an asylum within any of the countries of the other, upon such evidence of criminality, as, according to the laws of the place, where the person or fugitive so charged should be found, would justify his apprehension, and a commitment for trial, if the offence had been there committed. The British minister applied to the Executive for the delivery of Nash according to the stipulation of the treaty. Nash was arrested in South Carolina, and was brought before the District Judge in that state by a writ of *habeas corpus*, and the President signified to him his wish, that if the evidence warranted, the prisoner should be delivered over to the British minister. Upon a full hearing the District Judge was satisfied, that the proofs were sufficient, and delivered up the prisoner to the British authorities, by whom he was sent to Jamaica. The prisoner was there upon trial convicted of the offence, and suffered the punishment of death accordingly.

Nash, upon his examination before the District Judge, made affidavit of his being an American citizen, born in Danbury, Connecticut, and that he was an impressed seaman. The conduct of the Executive on this occasion was the subject of much harsh animadversion in the newspapers; and in South Carolina, in particular, the propriety of the proceeding was denied in a public letter, acknowledged to have been written by Mr Charles Pinckney, then a Senator in Congress from that state. The object of Mr Livingston's resolution was to procure a vote of censure of the Executive proceedings, as utterly destitute of legal authority. It may be easily imagined, that, smarting as the nation was under the odious exercise of impressment by British officers, the circumstances alleged by Nash were well calculated to inflame the public resentment, and to produce a strong popular feeling in his favor. It is now understood, that in point of fact he was a British subject, and not born in America. The resolutions were supported by Mr Livingston, Mr Gallatin, and other distinguished gentlemen;

they were opposed by Mr Bayard, Mr Marshall, and others. The speech of Mr Marshall on that occasion has been preserved.\* It is a most profound and admirable argument, and in the most conclusive manner establishes the propositions, that the case was within the provision of the treaty ; that it was proper for executive, and not for judicial decision ; and that in deciding it, the President was not chargeable with any interference with judicial duties. So complete was the demonstration, that it put the question at rest for ever. The speech was perfectly overwhelming ; and like the celebrated letter of the Duke of Newcastle on the Prussian Memorial, it may be characterized, in the language attributed to Montesquieu, as a '*réponse sans réplique.*' We have often heard an anecdote, for the truth of which we cannot however vouch, that a celebrated statesman, then in the opposition in Congress, was requested to answer it, and upon declining the task, said he must leave it to others ; for himself, he deemed it unanswerable.†

In May, 1800, Mr Marshall was, without the slightest personal communication, nominated by the President to the office of Secretary of War, upon the dismissal of Mr McHenry. We believe, that the first information received of it by Mr Marshall was at the department itself, where he went to transact some business previous to his return to Virginia. He immediately wrote a letter, requesting the nomination to be withdrawn by the President. It was not, and his appointment was confirmed by the Senate. The rupture between the President and Colonel Pickering, who was then Secretary of State, soon afterwards occurred, and Mr Marshall was appointed his successor. This was indeed an appointment in every view most honorable to his merits, and for which he was in the highest degree qualified. Yet he had great difficulties in accepting it ; and his final determination to accept it was mainly influenced by the same motive, which induced him to surrender his practice at the bar for a seat in Congress, a deep sense of public duty. The circumstances, under which he took the office, were not without embarrassment. The late cabinet had been dissolved in a manner, which left room for the indulgence of some person-

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\* It will be found reprinted in the Appendix to the fifth volume of Wheaton's Reports.

† The resolutions were lost by a vote of 61 against 35, some of the anti-administration party voting against them.



al resentments, if not recriminations; and the warm attachment, which Mr Marshall at all times evinced for President Adams, would naturally excite some coolness in those, who were then alienated from him. He had, however, the satisfaction soon to find himself upon the most cordial terms with all the Cabinet, and in the full possession of the unlimited confidence of the public.

Upon the resignation of Mr Chief Justice Ellsworth, a good deal of public anxiety was expressed respecting his successor. The friends of Mr Justice Patterson, who was certainly an eminent Judge, indulged the hope, that he would be nominated to the office. When the President consulted the Secretary of State on this subject, the latter unhesitatingly recommended Mr Patterson. The President, however, had an insuperable objection to the nomination, assigning as a reason, that he could not make it without wounding the feelings of Mr Justice Cushing, who was an old friend, and the senior Judge on the bench. He nominated Mr Jay, who declined; and as soon as that fact was known, the President, with unusual promptitude and decision, nominated Mr Marshall. The nomination was confirmed by the Senate, and Mr Marshall, on the 31st day of January, 1801, became Chief Justice of the United States, and has continued ever since that period to fill the office with increasing reputation and unsullied dignity. The wisdom of this choice, whatever might have been the disappointment or partiality of the friends of other candidates, has been fully established by the event. The sagacity and independence of President Adams, that intuitive perception of character, and comprehensiveness of observation, almost amounting to prophecy, which were so prominent traits in his mind, never were unfolded in a more imposing form. There is probably not a reflecting man in America of any party, or any fragment of any party, who would not now cheerfully admit, that the highest judicial honors could not have fallen on any one, who could have sustained them with more solid advantage to the glory or interests of the country.

Splendid, indeed, as has been the judicial career of this eminent man, it is scarcely possible, that the extent of his labors, the vigor of his intellect, or the untiring accuracy of his learning should be duly estimated, except by the profession, of which he is so great an ornament. Questions of law rarely assume a cast, which introduces them to extensive public no-

tice ; and those, which require the highest faculties of mind to master and expound, are commonly so intricate and remote from the ordinary pursuits of life, that the generality of readers do not bring to the examination of them the knowledge necessary to comprehend them, or the curiosity, which imparts a relish and flavor to them. For the most part, therefore, the reputation of judges is confined to the narrow limits, which embrace the votaries of jurisprudence ; and many of those exquisite judgments, which have cost days and nights of the most elaborate study, and for power of thought, beauty of illustration, variety of learning, and elegant demonstration, are justly numbered among the highest reaches of the human mind, find no admiration beyond the ranks of lawyers, and live only in the dusty repositories of their oracles. The fame of the warrior is for ever embodied in the history of his country, and is colored with the warm lights reflected back by the praise of many a distant age. The orator and the statesman live not merely in the recollections of their powerful eloquence, or the deep impressions made by them on the character of the generation in which they lived, but are brought forth for public approbation in political debates, in splendid volumes, in collegiate declamations, in the works of rhetoricians, in the school-books of boys, and in the elegant extracts of maturer life. Not to go back to the ancients, the speeches of Chatham, and Burke, and Sheridan, and Pitt, and Fox, and Grattan, will be familiar to the ears, and uttered by the voices of thousands, who never heard of the gigantic learning of Coke, the commanding judgment of Holt, the infinitely varied professional attainments of Hardwicke, the felicitous and convincing genius of Mansfield, the cautious and unerring sagacity of Eldon, the almost preternatural union of judicial eloquence, exquisite diction, and sound principles in Stowell ; or, to name a few among the illustrious living and dead of our own country, the unostentatious but vigorous sense of Tilghman, the profound and acute discernment of Parsons, or the exhausting diligence and polished strength of Kent.

We shall not attempt, on this occasion, to enter upon a minute survey of the official labors of Chief Justice Marshall. However instructive or interesting such a course might be to the profession, the considerations already adverted to sufficiently admonish us, that it would not be very welcome to the mass of other readers. But there is one class of cases, which

ought not to be overlooked, because it comes home to the business and bosom of every citizen of this country, and is felt in every gradation of life from the chief magistrate down to the inmate of the cottage. We allude to the grave discussions of constitutional law, which during his time have attracted so much of the talents of the bar in the Supreme Court, and sometimes agitated the whole nation. If all others of the Chief Justice's juridical arguments had perished, his luminous judgments on these occasions would have given an enviable immortality to his name.

There is in the discharge of this delicate and important duty, which is peculiar to our institutions, a moral grandeur and interest, which it is not easy to over-estimate either in a political or civil view. In no other country on earth are the acts of the legislature liable to be called in question, and even set aside, if they do not conform to the standard of the constitution. Even in England, where the principles of civil liberty are cherished with uncommon ardor, and private justice is administered with a pure and elevated independence, the acts of Parliament are, by the very theory of the government, in a legal sense omnipotent. They cannot be gainsaid or overruled. They form the law of the land, which controls the prerogative and even the descent of the crown itself, and may take away the life and property of the subject without trial and without appeal. The only security is in the moderation of Parliament itself, and representative responsibility. The case is far otherwise in America. The state and national constitutions form the *supreme law* of the land, and the judges are sworn to maintain these charters of liberty, or rather these special delegations of power by the people (who in our governments are alone the depositaries of supreme authority and sovereignty), in their original vigor and true intendment. It matters not, how popular a statute may be, or how commanding the majority by which it has been enacted; it must stand the test of the constitution, or it falls. The humblest citizen may question its constitutionality; and its final fate must be settled upon grave argument and debate by the judges of the land.

Nor is this the mere theory of the constitution. It is a function, which has been often performed; and not a few acts of state as well as of national legislation, have been brought to this severe scrutiny; and after the fullest consideration, some have been pronounced to be void, because they were unconstitu-

tional. And these judgments have been acquiesced in, and obeyed, even when they were highly offensive to the pride and sovereignty of the state itself, or affected private and public interests to an incalculable extent.

Such, in America, is the majesty of the law. Such is the homage of a free people to the institutions, created by themselves. Such is the consciousness of every citizen, that he holds his life, his liberty, and his property by the judgment of his peers, and the sovereignty of the constitution. What, after all, is the most wonderful in this political machinery, is the simplicity of its structure, and the ease of its operation. A foreigner would suppose, that the accomplishment of such mighty effects would require the aid of every sort of external means of influence to guard it, and ensure its success. He would imagine, that the functionaries of such duties must have the advantages of noble birth, of hereditary right, of great wealth, of extensive patronage, and of the command of military resources. How great would be his surprise to learn, that the judges, who are to decide these questions in the last resort, are few in number, rarely wealthy, with moderate salaries, with no patronage beyond the poor appointment of the clerk of their own courts, with no array of military force, living unostentatiously among their fellow-citizens, and having no means of influence beyond what their talents and public services and private virtues might command in any other station. Yet they perform the duty fearlessly and independently, and often under circumstances of the most painful and trying responsibility, in the midst of popular prejudices, party triumphs, state strifes, and national dissatisfactions. We speak here, not particularly of the judges of the Supreme Court of the United States; but also of the judges of the highest state courts in the Union. The whole power possessed by all or any of them extends not, for any practical purpose, beyond a mere naked moral power, the power of solid reasoning, just exposition, and sober appeal to the good sense of honest and intelligent minds. Their strength is in their arguments; and they speak a law, which is obeyed, and followed, and respected, simply because the profession in its learned ranks approves it, and the community comprehends its justice and conservative authority. Whoever reflects deeply must perceive, that this is the balance-wheel of our political system, the regulator, which sometimes accelerates and sometimes retards the public movements, but always works

to ensure the general safety. Suspend its operation, or weaken its exercise, and we may still remain a federative government ; but it will be one enfeebled and distracted by its bad adjustments, or hurried on to despotic excesses by the common plea of tyrants, the consciousness of power and the plausible pretences of necessity.

This topic is so copious, and of such everlasting consequence to the wellbeing of this Republic, that it furnishes matter for volumes ; and we must escape from it with the brief hints already suggested, to resume the subject of the constitutional labors of Chief Justice Marshall. We emphatically say, of Chief Justice Marshall ; for though we would not be unjust to those learned gentlemen, who have from time to time been his associates on the bench, we are quite sure, that they would be ready to admit, what the public universally believe, that his master mind has presided in their deliberations, and given to the results a cogency of reasoning, a depth of remark, a persuasiveness of argument, a clearness and elaboration of illustration, and an elevation and comprehensiveness of conclusion, to which none others offer a parallel. Few decisions upon constitutional questions have been made, in which he has not delivered the opinion of the Court ; and in these few, the duty devolved upon others to their own regret, either because he did not sit in the cause, or from motives of delicacy abstained from taking an active part.

If we do not mistake, there is but a single case, in which his judgment is known to have differed from that of the Court upon any point of constitutional law. That case was *Ogden vs. Saunders*, decided at the last term of the Court, which involved the question of the constitutionality of an insolvent law, which was passed antecedently to the formation of a contract, and discharged its obligation. On this occasion, four judges, against the opinion of the Chief Justice and two other judges, decided in favor of the constitutionality of such a law. It is not for us to discuss the merits of this controversy ; much less to assume the task of interpleading in such a cause, *magnas componere lites*. But we may be permitted to say, that the peculiar powers of the Chief Justice were never exhibited in a more impressive manner, or with more collected vigor. It is, indeed, a most delightful thought, that at the advanced age of seventy-two this great judge still retains the full possession of his faculties, and that he has gone on from year to year through

his judicial labors with powers constantly improving by their wholesome exercise ; and that if a single year were to be selected to furnish the most various exhibitions of his talents, none could be selected with more propriety than the last. To justify our assertion, we ask the attentive reader to take up the twelfth volume of Mr Wheaton's Reports, and examine for himself. Let him peruse with a professional or a common mind the opinions in the cases of *Clark vs. The City of Washington*, *Williams vs. Norris*, *The Bank of the United States vs. Dandridge*, *Brown vs. The State of Maryland*, *Henderson vs. Poindexter*, and *Ogden vs. Saunders* (to which we have already adverted), let him peruse, we say, the opinions in these cases, and consider how complicated and difficult were the points involved in them, and we are sadly mistaken, if he will not rise from the task with the most unhesitating approbation of our declaration.

We had originally intended to give an historical sketch of the constitutional questions argued in the Supreme Court during the period of his Chief-Justiceship ; and we remain of the belief, that it would have been not without interest even to persons, who have never embarked in juridical studies. But the subject has already swollen so much under our hands, that we are compelled to abandon it for the present. We cannot, however, quit the judicial character of Mr Marshall without expressing our earnest hope, that he may long remain in his present exalted station, adding new and solid lustre to our national jurisprudence. Mr Wheaton has just closed his own valuable labors as reporter, by accepting an appointment to serve the government in the more captivating and dignified employment of a foreign mission. The Chief Justice can wish no more fortunate fate, than to have his future opinions preserved in as durable a form by as gifted a successor.

We have thus given a brief, but we trust, a faithful sketch of the life and public services of the author of the work now before us. We have been tempted more than once to break through the reserve, which duty imposes upon us, in speaking of the living, that we might indulge ourselves in other sketches of a more private and domestic nature, which would carry a charm with them into every circle. But we must forget the man, and proceed to the author ; and in the very narrow space yet left to us, endeavor to do some moderate justice to the *History of the American Colonies*.

We have already adverted to the severe diligence, with which the present revised edition has been prepared for publication by the author. From a regard to his own character, as well as from his habitual deference for public opinion, it may well be presumed, that the work has now attained a very high degree of accuracy. The public expectations in this respect will not be disappointed. Mr Marshall is not one of those ready writers, who run over a large mass of materials with a careless or indifferent eye, and sit down to write their first impressions, and fill up the spaces left vacant of facts with plausible conjectures, or imaginary events. He does not listen with implicit faith to every idle tale told by artless credulity or vulgar prejudice. He does not seek the title of superior wisdom by unsettling the truths of history, and proving, that all writers, but himself, have mistaken the facts and the characters of former times. He does not construct any new narrative of events, and in his own closet show how fields were lost or won, by drawing upon the resources of his own fancy. He does not dispute the veracity of persons nearest the scenes, simply because his own theory would be broken down by any admission in their favor. Far different is his course, and far different his ambition. The habits of his mind are close investigation, caution, patience, and a steady devotion to the weight of evidence. He examines all the materials before him with the sobriety and impartiality of judicial life. His conclusions, therefore, if they are not always absolutely correct, are such, as it is difficult to resist, and never without very strong historical support. We have no hesitation in declaring, that the present work contains the most authentic history of the colonies, which is extant; and that it may be relied on with entire safety, as combining accuracy with variety of information.

So far as the printed materials go, great care has been bestowed to embody in the narrative all important facts; and we venture to pronounce, that the authorities cited by him will be found upon examination fully to bear him out in every statement. The plan of the work excludes the notion, that it can expound with minute detail the rise and progress of every colony. That is properly the object of those local and distinct histories, which are employed in the survey of a single colony. In such a narrative, those domestic occurrences and local circumstances, which unfold the peculiar character of the inhabitants, their pursuits and their feelings, their faults and

their factions, find an appropriate place. They amuse the curious, and instruct the antiquary ; they warm the hearts and kindle the imaginations of those, who are born on the spot, and feel the inspirations of the place. But, for the most part, they can only be glanced at by the historian, and then only, when they have left deep traces of the times behind them, and imparted impulses, which have extended to other and distant ages. The private and internal transactions of states bear a very close analogy to the biography of individuals. Each may furnish materials for general history, but must be forever separated from it in objects and interests.

Mr Marshall's work professes to be a general history of all the colonies, and it is necessarily compendious. Yet it narrates all important public facts, and on no proper occasion omits to present to us the manners, and principles, and feelings of our ancestors, proper to illustrate those facts. He does not obtrude his own reflections with a profuse and embarrassing pertinacity. But there are everywhere scattered through the volume, in an unostentatious manner, proofs of his sagacity, candor, and intimate knowledge of human nature.

The style of the work is in perfect keeping with the character of the author. It is perspicuous, simple, and forcible. It possesses no studied ornaments, no select phrases, no elegant turns, and no ambitious floridness. It is plain, pure, and unpretending. Many of those words in the former edition, which were objected to by British critics in no very kind spirit, as peculiar to America, though they exist in the writings of authors of good repute in their own country, have been sedulously removed from the text. We do not object to this, though we have had occasion to know, that some criticisms of this sort have been owing more to the ignorance or petulance of the reviewers, than to their sound taste or extensive acquaintance with English literature.

After what we have said, it seems hardly necessary to add, that we recommend the work, as entitled to a place in every well selected American library, and as indispensable for every person, who aspires to a general knowledge of the history of America. We trust the learned author will find leisure to revise in the same manner his *Life of Washington*, and to give it the last finishing touches of his ripest judgment. The close of his long and active life could not be employed more usefully for himself or his country.



There are two defects in the execution of the work, which we regret, and which may be easily removed in a subsequent edition. In the first place, the particular pages of the authorities cited are not given, so that the task of reference is very laborious to any reader, who wishes to verify a particular fact. In the next place there is no index to the matter of the work ; and a table of the contents can never well supply such a deficiency. We do not dwell on these inconveniences ; it is sufficient to point them out to the candor of the author.

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ART. II.—*An Amended Version of the Book of Job, with an Introduction, and Notes chiefly explanatory.* By GEORGE R. NOYES. Cambridge, 8vo. pp. 200. Hilliard & Brown. 1827.

MUCH criticism has been expended on the Book of Job. Apart from its interpretation, several questions have been debated concerning the kind of composition, and the antiquity of the work ; whether the history be true or fabulous ; where the scene of the story is laid ; to what age it is to be referred, and by whom it was written. On some of these questions, little satisfaction can be obtained, and we shall pass over the ground but very cursorily, before we come to speak particularly of Mr Noyes's Version.

With the exception of a short proem and conclusion, Job is acknowledged on all hands to be a poetical book. We do not seek the evidence of this in exact versification ; for if any of the Hebrew writings ever had such a versification, we have now no means of ascertaining what it is. Oriental critics are not so idly employed now-a-days, as to search for the tetrameters, hexameters, sapphics, and iambics in Hebrew verse, of which the fanciful Jerome spoke so familiarly ; but any one who is tolerably conversant with the Hebrew writings, will perceive a peculiar diction, and a distribution of sentences and members of sentences into that kind of correspondency of parts, which indicate some regard to numerical harmony ; and which clearly distinguish the poetical books from those, which are merely narrative, or intended only to prescribe rules of life and